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Filing date: **12/11/2018**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Plaintiff Image Ten, Inc.
Correspondence Address	FARAH P BHATTI BUCHALTER NEMER 18400 VON KARMAN AVENUE SUITE 800 IRVINE, CA 92612 UNITED STATES mmeeks@buchalter.com, fbhatti@buchalter.com, trademark@buchalter.com 949-224-6272
Submission	Opposition/Response to Motion
Filer's Name	Michael L Meeks
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Signature	/s/ Michael L Meeks
Date	12/11/2018
Attachments	Response to Default Request.PDF(67420 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc. Opposer, v. Rusty Ralph Lemorande Applicant.	Opposition No.: 91233690 OPPOSER IMAGE TEN, INC.'S OPPOSITION TO MOTION FOR DEFAULT JUDGMENT
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RESPONSE TO DEFAULT REQUEST

First, Applicant was prohibited from filing the motion for default. Pursuant to the Order dated October 3, 2018:

Proceedings are suspended pending disposition of Applicant's combined motion (filed September 18, 2018) to compel discovery and extend Applicant's discovery period, except as described below. **The parties should not file any paper that is not germane to the motion to compel.** See Trademark Rule 2.120(f)(2)

(Emphasis added.) (Exhibit 1). Opposer filed its opposition to the motion to compel on October 10. **No order has been issued concerning the motion to compel.**

Second, Opposer has never violated an order of the TTAB and has been actively participating in the opposition. Opposer objected to Applicant's discovery and the TTAB will decide what documents must be produced. As set forth in the pending motion, there is a substantial dispute concerning the scope of discovery.

Third, default sanctions are an extreme remedy only available when a party fails to comply with orders from the TTAB. *Baron Philippe de Rothschild SA v. Styl-Rite Optical Mfg, Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000); Rule 1.120(g)(1).

Here, the TTAB has not ordered any production of documents. There is a pending discovery dispute. Opposer has responded to interrogatories and all that is in dispute is the proper scope of documents to be produced. There is no basis for default whatsoever.

Applicant does not cite any order violated by Opposer. Instead, Opposer has responded to discovery and followed the orders of the TTAB. There is no basis for default.

Accordingly, the TTAB should deny the motion for default.

Dated: December 11, 2018

Respectfully Submitted,

/Michael Meeks/

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EXHIBIT 1

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

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October 3, 2018

Opposition No. 91233690

Image Ten, Inc.

v.

Rusty Ralph Lemorande

**Katie W. McKnight,
Interlocutory Attorney:**

Proceedings are suspended pending disposition of Applicant's combined motion (filed September 18, 2018) to compel discovery and extend Applicant's discovery period, except as discussed below. The parties should not file any paper that is not germane to the motion to compel. *See* Trademark Rule 2.120(f)(2).

The parties may not serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of the motion to compel disclosure or discovery shall not toll the time for a party to comply with any initial disclosure requirement, or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If the motion to compel was filed after the close of discovery, the parties need not make pretrial disclosures until directed to do so by the Board. *See* Trademark Rule 2.120(f)(2); TBMP § 523.01.

Applicant's motion will be decided in due course.

CERTIFICATE OF SERVICE

Opposer, Image Ten, Inc., hereby certifies that a copy of this OPPOSER IMAGE TEN, INC.'S
OPPOSITION TO MOTION FOR DEFAULT JUDGMENT
has been served upon Applicant on this 11th day of December, 2018 by email at the following
address:

Lemorande@gmail.com

/s/ Michael L. Meeks